ELIZABETH J. MARTINI

IBLA 77-291 Decided August 13, 1979

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, rejecting in part Native allotment application F-13337.

Affirmed.

1. Alaska: Native Allotments -- Indian Allotments on Public Domain: Lands Subject to -- Withdrawals and Reservations: Generally

   Withdrawn lands are not open to appropriation under the Native Allotment Act. Appellant's settlement upon a tract of land withdrawn from entry is a trespass, and such settlement does not provide a basis for any claim to the land.

2. Alaska: Native Allotments -- Indian Allotments on Public Domain: Lands Subject to -- Withdrawals and Reservations: Generally

   Publication in the Federal Register of PLO No. 3432 withdrawing certain lands in Alaska from all forms of appropriation under the public land laws, except leasing under the mineral leasing laws, gives valid notice of its contents.

APPEARANCES: Elizabeth J. Martini, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elizabeth J. Martini appeals from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated February 25, 1977, rejecting in part her application for Native allotment F-13337.

On January 13, 1971, the Bureau of Indian Affairs filed a Native Allotment Application and Evidence of Occupancy on behalf of appellant for land within protracted sec. 36, T. 1 S., R. 3 E., Fairbanks meridian (Parcel A), and within protracted sec. 7, T. 2 N., R. 32 E., Fairbanks meridian (Parcel B). This appeal is taken from BLM's rejection of Parcel A.

Application for allotment was made under the Act of May 17, 1906, 34 Stat. 197, authorizing the Secretary of the Interior

> to allot not to exceed one hundred sixty acres of nonmineral land in the district of Alaska to any Indian or Eskimo of full or mixed blood who resides in and is a native of said district, and who is the head of a family, or is twenty-one years of age.

This Act was repealed on December 18, 1971, with the passage of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), subject to applications pending on that date. Appellant's application alleged her occupancy of the subject lands since September 1968.

By notice of December 8, 1976, BLM informed appellant that Parcel A was located partially within the patented Eagle Townsite and partially within an area affected by PLO No. 3432. The notice informed appellant that lands sought within patented Eagle Townsite were no longer under the jurisdiction of the Federal Government. Patents for Eagle Townsite were issued in part on January 18, 1909, and thereafter on January 24, 1961.

As to the lands affected by PLO No. 3432, the notice informed appellant that an application for withdrawal of such lands was filed by BLM on April 30, 1963. PLO No. 3432 was issued on August 13, 1964, and was published in the Federal Register on August 19, 1964. 1/ The effect of this public land order was to withdraw the lands therein described from all forms of appropriation under the public land laws, except leasing under the mineral leasing laws, and to reserve the lands under the jurisdiction of BLM for public recreation purposes. The notice concluded by extending to appellant

1/ PLO No. 3432 was signed by John A. Carver, Jr., Assistant Secretary of the Interior, pursuant to the delegation set forth in Exec. Order No. 10355 of May 26, 1952 (17 FR 4831).

60 days within which to submit evidence of at least 5 years continuous use and occupancy begun before the effective date of withdrawal.

[1] By decision dated February 25, 1977, BLM rejected appellant's application on the ground that PLO No. 3432 had withdrawn from settlement those lands sought by appellant. The effective date of this withdrawal was determined to be April 30, 1963, the date of application for withdrawal. 43 CFR 2091.2-5. Withdrawn lands are not open to appropriation under the Native Allotment Act. Serafina Anelon, 22 IBLA 104 (1975). Appellant's settlement upon a tract of land withdrawn from entry is a trespass and provides no basis for any claim to the land. Donald E. Miller, 2 IBLA 309 (1971).

[2] In her statement of reasons on appeal, appellant argues that she should have been informed at the time of her application of the withdrawal affecting those lands sought by her in Parcel A. The answer to appellant's argument is set forth in 44 U.S.C. § 1507 (1976):

> Unless otherwise specifically stated by statute, filing of a document, required or authorized to be published by section 1505 of this title, except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it.

Section 1505(a) provides: "There shall be published in the Federal Register - . . . (2) documents or classes of documents that the President may determine from time to time have general applicability and legal effect; . . . ." 2/ Under regulations approved by the President on August 25, 1941, 6 FR 4397, 4407, all orders, rules, regulations, and instructions of general applicability and legal effect, issued, prescribed or promulgated by the Secretary of the Interior and relating to the General Land Office (now BLM) were determined to fall within this category. Solicitor's Opinion, M-36382 (October 24, 1956); Edwards v. Brockbank, A-25960 (April 3, 1951).

A withdrawal order published in the Federal Register gives valid notice of its contents. Rod Knight, 30 IBLA 224 (1977); Emil I. Stadler, 15 IBLA 180 (1974). Although appellant can honestly claim to have been unaware of the withdrawal, she must be constructively presumed to have had notice of the withdrawal.

2/ We note that Exec. Order No. 10355, the delegation from President Truman to the Secretary of the authority to withdraw or reserve lands in the public domain, requires that public land orders be published in the Federal Register.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4. 1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joan B. Thompson
Administrative Judge